



Docket No. CRD-989

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : David Majercakl et al. Confirmation No.: 2104
Appln. No. : 10/056,725
Filed : January 25, 2002
Title : STENT WITH ENHANCED CROSSABILITY

Art Unit : 3731
Examiner : V. Nguyen

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Paul A. Coletti
(Name of applicant, assignee, or Registered Representative)

/Paul A. Coletti/
(Signature)

June 28, 2005
(Date of Signature)

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P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

The following represents the Appeal Brief for the above captioned application.

I. Real Party in Interest

The real party in interest is Cordis Corporation, the assignee of the present invention.

II. Related Appeals and Interferences

To the Applicants knowledge, there are no known appeals or interferences which may be related to directly effect or be directly affected by the Board's decision in the pending appeal.

III. Status of the Claims

Claims 1-4 and 6-8 of the present invention stand finally rejected in a Final Rejection dated November 2, 2004. No other claims are pending.

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IV. Status of Amendments

The claims have not been amended after the Final Rejection. Applicants filed a response After Final Rejection dated January 18, 2005. However, the response was in the form of a Request for Reconsideration of the Final Rejection. By way of Advisory Action dated February 17, 2005, the Examiner maintained his rejection of claims 1, 2 and 4-12.

V. Summary of Claimed Subject Matter

The present invention describes a stent in the form of a thin-walled, multi-cellular, tubular structure having a longitudinal axis. The stent comprises a multiplicity of sets of strut members. Each set of such strut members is longitudinally separated each from the other, and each set of strut members forms a closed, ring-like cylindrical section of the stent. Each set of strut members consists of a multiplicity of strut elements. Each strut element consists of the one curved end strut that is joined at a junction point to one diagonal strut. Further, there are a multiplicity of sets of flexible links, with each set of flexible links connecting two of the multiplicity of sets of strut members.

Each set of flexible links consists of a multiplicity of individual flexible links. Each individual flexible link is a single undulating structure that extends generally in the longitudinal direction (i.e., parallel to the stent's longitudinal axis). The shape of at least some of the individual flexible links is in the shape of a letter "Z", wherein each of said links has at least two generally curved segments, connected to at least three straight segments wherein the straight segments of each of the individual flexible links lie generally along the longitudinal axis of the stent. The stent of this description is best seen in Figure 2, as the "stent" 10 and "flexible link" 12 in the form of a "Z" shape. The expansion of the stent is described in Figure 4.

VI. Grounds of Rejection to be Reviewed on Appeal

1. *Are claims 1-4 and 6-8 patentable under 35 USC §102(e) as being unpatentable over Fischell, U.S. Patent No. 6,190,403?*

VII. Argument

Are Claims 1-4 and 6-8 patentable under 35 USC §102(e) as being unpatentable over Fischell, U.S. Patent No. 6,190,403?

Claims 1-4 and 6-8 were rejected under 35 USC §102(e) as being anticipated by Fischell et al., U.S. Patent No. 6,190,403. Yet, the Examiner seems to ignore that in his *own* rejection he neglects to identify a limitation which is simply not present in Fischell. That is, the last line of claim 1 requires that the straight segments of each of the individual flexible links “lie generally along the longitudinal axis of the stent.”

It is clear that in Fischell the straight segments (such as those identified by 19b by the Examiner) lie generally *transverse* to the longitudinal axis of the stent. Accordingly, the Examiner cannot possibly assert that claims 1-4 and 6-8 are anticipated by Fischell. For this reason alone, it is earnestly solicited that the rejection should be removed and the claims allowed to pass to issuance.

In the Advisory Action, the Examiner asserts that:

the Applicant argues that Fischell's vascular stent does not disclose that the straight segments of each of the individual flexible links lie generally along the longitudinal axis of the stent. The Examiner, respectfully, disagrees. Fischell's vascular stent, in fact, does disclose each of the links has at least two curved segments which connected to at least three straight segments (19b, Fig. 3 is considered as a straight segment), and where each of the straight segments (19b) of the individual flexible links *lie along* the longitudinal axis (28) of the stent (10). Therefore, claim 1 of the

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invention is not defined over the Fischell reference. (Emphasis added.)

It is respectfully asserted that the Examiner is plainly incorrect. According to Merriam-Webster Dictionary (online version) “along” means:

A-long (a-long’ *prep.*)

1: In a line *parallel with the length* or direction of (emphasis added.)

Also, this definition is entirely consistent with the disclosure of Figures 2 and 4. For the Examiner to indicate otherwise is inappropriate, as it rejects over the plain meaning of the claim and the specification.

Since the cited reference to Fischell does not describe the stent as claimed, all of the claims are patentable over Fischell, and they should pass to issuance.

VIII. Claims Appendix

The claims presented on Appeal appear in Appendix I attached hereto.

XI. Conclusion

Applicants herewith respectfully urge the reversal of the Examiner and the allowance of claims 1-4 and 6-8.

Respectfully submitted,

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APPENDIX I

1. (Previously amended) A stent in the form of a thin-walled, multi-cellular, tubular structure having a longitudinal axis, the stent comprising:

a multiplicity of sets of strut members, each set of strut members being longitudinally separated each from the other and each set of strut members forming a closed, ring-like cylindrical section of the stent,

each set of strut members consisting of a multiplicity of strut elements, each strut element consisting of one curved end strut that is joined at a junction point to one diagonal strut;

a multiplicity of sets of flexible links with each set of flexible links connecting two of the multiplicity of sets of strut members,

each set of flexible links consisting of a multiplicity of individual flexible links, each individual flexible link being a single undulating structure that extends generally in the longitudinal direction that is parallel to the stent's longitudinal axis the shape of at least some of the individual flexible links being in the shape of a letter "Z", wherein each of said links has at least two generally curved segments, connected to at least three straight segments wherein the straight segments of each of the individual flexible links lie generally along the longitudinal axis of the stent.

2. (Original) The stent of claim 1 wherein each individual flexible link has two ends, each one of the two ends being fixedly attached to the multiplicity of strut elements thereon.

3. (Original) The stent of claim 1 wherein there are adjacent sets of strut members which are in-phase with one another.

4. (Original) The stent of claim 1 wherein there are adjacent sets of strut members which are out-of-phase with one another.

5. (Canceled)

6. (Previously amended) A stent of approximately cylindrical shape comprising a longitudinal axis and a radial axis, wherein the cross-section approximately perpendicular to the longitudinal axis defines a circumference, the stent comprising:

a plurality of sets of circumferential members, wherein each set of members forming a closed, ring-like configuration about the circumference and each set of members is longitudinally separated each from the other, wherein each set of members consists of a multiplicity of elements, each element consisting of one curved end;

a plurality of flexible links, each individual flexible link being a single undulating structure that extends generally along a circumference and each individual flexible link has two ends, each one of the two ends being fixedly attached to the multiplicity of strut elements at an attachment point thereon; and

wherein the strut elements of the individual flexible links lie along the stent longitudinal axis so that the flexible links when viewed in elevation are formed in the shape of the letter "Z".

7. (Previously amended) A stent in the form of a thin-walled, multi-cellular, tubular structure having a longitudinal axis, the stent comprising a multiplicity of circumferential sets of strut members, each set of strut members being longitudinally separated each from the other, each set of strut members being connected to adjacent sets of strut members by longitudinal connecting links, each individual connecting link being a single undulating structure with at least a portion of said connecting links generally extending along a circumference, wherein each single undulating structure is in the shape of a letter "Z" with at least two straight segments lying along the strut longitudinal axis;

wherein each of said links has at least two generally curved segments placed generally opposite each other in the longitudinal direction.

8. (Original) The stent of claim 7 wherein upon expansion the centers of curvature of the two curved elements undulate around each other so that a link extends parallel to the circumference of the stent.

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9. (Canceled)

10. (Canceled)



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Paul A. Coletti

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(Signature)

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(Date of Signature)

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Dear Sir:

Attached is an Appeal Brief for the above-captioned patent application. Please charge Deposit Account No. 10-0750/CRD-989/PAC in the name of Johnson & Johnson in the amount of \$500.00, representing the cost of filing a Brief on Appeal in the above-captioned matter. The Commissioner is hereby authorized to charge any additional fees which may be required to Account No. 10-0750/CRD-989/PAC. This Authorization is being submitted in triplicate.

Respectfully submitted,

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